

Remarks

The Amendments

Claims 1-27 have been canceled without prejudice and do not constitute amendments to overcome any prior art or other statutory rejections. Additionally, this cancellation of claims is not an admission regarding the patentability of subject matter of the canceled claims and should not be so construed. Applicant reserves the right to pursue the subject matter of the canceled claims in this or in any other appropriate patent application. The amendments add no new matter and applicants respectfully request their entry.

Rejection of Claims 1-42 Under 35 U.S.C. §103(a)

Claims 1-42 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Russell, in view of Fisher and/or Mezei. Claims 1-27 have been canceled. Applicants respectfully traverse the rejection as it applies to claims 28-42.

A finding of obviousness depends on (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, including commercial success, long felt but unsolved needs, and failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

The cited art does not teach each and every element of the claims. Claims 28-41 teach method of treating navicular syndrome in a horse. None of the references teach or suggest methods for treating navicular syndrome in a horse. Russell teaches a method of treating laminitis, which is the inflammation and destruction of the cellular bond between the sensitive and insensitive laminae of the hoof. Navicular syndrome, however, is usually a chronic bilateral foreleg lameness. Horses with navicular syndrome can have a choppy, shuffling type gait and can wear the toes of their feet leaving the heels to grow longer. Horses with an upright conformation, small feet, or that are improperly shod can be at higher risk for the syndrome since they transmit more concussive force through the navicular region. The more pressure that is applied to the navicular bone from the deep flexor tendon, the more likely the horse will suffer from navicular disease. This repetitive force can result in damage and inflammation to the navicular bone resulting in navicular syndrome. See, specification, page 6, second full paragraph.

Since the references do not teach or suggest the treatment of navicular syndrome, they cannot render the instant claims obvious. Applicants respectfully request withdrawal of the rejection.

Rejection of Claims 1-42 Under 35 U.S.C. §103(a)

Claims 1-42 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Russell, in view of Fisher and/or Mezei, and further in view of Grace. Claims 1-27 have been canceled. Applicants respectfully traverse the rejection as it applies to claims 28-42.

As discussed above, Russell, Fisher and Mezei do not teach or suggest methods for treating navicular syndrome in a horse. Grace teaches the treatment of osteoarthritis in humans using diclofenac. Grace does not correct the deficiencies of Russell, Fisher and Mezei. Therefore, the combination of references does not render the instant claims obvious. Applicants respectfully request withdrawal of the rejection.

Rejection of Claims 1-42 Under Nonstatutory Obviousness-Type Double Patenting

Claims 1-42 stand rejected on the grounds of nonstatutory obviousness-type double patenting over claims 1-10 of U.S. Patent No. 6,936,272. Applicants respectfully traverse the rejection.

U.S. Patent No. 6,936,272 is not commonly owned with the instant application. As such, this rejection is improper and must be withdrawn.

Respectfully submitted,

Date: July 27, 2007

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